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KIRTON AND MCCONKIE  
60 EAST SOUTH TEMPLE,  
SUITE 1800  
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**OCT 27 2009**

**OFFICE OF PETITIONS**

In re Application of	:
Jensen et al.	:
Application No. 09/839,433	: DECISION ON PETITION
Filed: April 20, 2001	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10209.56	:

This is a decision on the petitions under 37 CFR 1.78(a)(3) and 1.78(a)(6), filed August 4, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 119(e) for the benefit of the applications set forth in the concurrently filed amendment and Application Data Sheet (ADS).

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

With regards to item (1), petitioner is attempting to claim priority from the instant application to nonprovisional Application No. 10/006,014, filed December 4, 2001, and provisional Application Nos. 60/740,446, filed November 29, 2005, and 60/251,416, filed December 5, 2000. However, both 35 U.S.C. 120 and 119(e) are reserved for the benefit of *prior-filed* applications. The only application listed above which is filed prior to the instant application is provisional Application No. 60/251,416.

Accordingly, before the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) can be granted, a substitute amendment<sup>1</sup> correcting the above matter, along with a renewed petition under 37 CFR 1.78(a)(3) and 1.78(a)(6), is required. No further petition fee is necessary.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/  
Liana Walsh  
Petitions Examiner  
Office of Petitions

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<sup>1</sup> Note 37 CFR 1.121